CF0000062436

(2)

IN THE HIGH COURT OF JUDICATUE AT JABALPUR,M.P.

CRIMINAL APPEAL NO. 1795 /1999

(9180)

7/12/99
J&M/15479
Advocate

APPELLANT (In jail) : Santosh Kumar s/o Shri Jagannath Prasad Chandra, aged about 20 years, R/O Karigoan, Police Station Malkharonda, Distt. Janggir-Chanpa, (MP).

Vs.

RESPONDENT : State of M.P. through P.S. Malkharonda, Distt. Janjgir, (Chapa) (MP).

MEMORANDAM OF CRIMINAL APPEEL UNDER SECTION 374 (2) oF THE CRIMINAL PROCEDURE CODE

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1795/1999

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Santosh Kumar

Versus

State of Madhya Pradesh (now State of Chhattisgarh)

Present:-
Shri Yogeshwar Sharma, learned Counsel for the appellant.
Shri Neeraj Mehta,Panel Lawyer for the State.

ORAL JUDGMENT
(Delivered on 3rd of May-2006)

This appeal is directed against the judgment dated 17-06-1999 delivered by Shri C.P.Suman, Additional Sessions Judge, Sakti, District-Bilaspur in Sessions Case No.08/1999 whereby the appellant was convicted under Section-376(1) of the IPC and was sentenced to undergo rigorous imprisonment for 7 years and to a fine of Rs.2,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 6 months.

2. Briefly stated the factual matrix is that the prosecutrix was deeply in love with the appellant and indulged in sexual intercourse with the appellant on an assurance of marriage given by the appellant. The prosecutrix had also conceived pregnancy but got it aborted upon medication given by the appellant. The sexual indulgence by the appellant continued. Upon refusal of the appellant to marry the prosecutrix, F.I.R. was lodged on 07-10-1998 vide Ex.P-1 at Police Station-Malkharoda. On medical examination Dr. Smt. S.P.Kanwar PW-22 did not find any marks of violence on the person or private parts of the prosecutrix and could not give any definite opinion about rape. Dr.S.Chatterji PW-16 conducted the ossification test for

determination of the age of the prosecutrix and estimated the age of the prosecutrix to be 17 years. School Admission Register showing the date of birth of the prosecutrix to be 01-07-1983 was seized. Dr. R.D.Gupta PW-21 examined the appellant and found that he was capable of performing sexual intercourse. After completion of investigation, the appellant was prosecuted. The appellant abjured the guilt. The prosecution examined as many as 24 witnesses. No evidence in defence was led by the appellant. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in para-1. (Supra)

3. Shri Yogeshwar Sharma, learned counsel for the appellant has assailed the conviction of the appellant on the ground that the evidence led by the prosecution clearly shows that the prosecutrix was aged more than 17 years and being deeply in love with the appellant had voluntarily consented to sexual intercourse. On these grounds, it was prayed that the conviction and sentence awarded by the learned trial Judge is liable to be aside. On the other hand, Shri Neeraj Mehta, learned Panel Lawyer for the State argued in support of the impugned judgment.

4. Having considered the rival contentions, I have perused the record of Sessions Case Number-08/1999. Ram Kumar PW-4, brother of the prosecutrix has stated that he was aged 20 years and the prosecutrix was 2 years younger to him. In this manner, it appears that the prosecutrix was 18 years of age at the time of occurrence. The report of ossification test conducted by Dr. S. Chatterji PW-16 also shows that the age of the prosecutrix was estimated to be 17 years. Considering the legally permissible margin of error of 2 years on either side, it cannot be ruled out that the prosecutrix was above 16 years of age on the date of occurrence. Primary evidence relating

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to proof of date of birth of the prosecutrix was also not adduced by the prosecution.

5. There is overwhelming evidence on record to show that the prosecutrix was deeply in love with the appellant and both were committed to marry and to commit suicide in the event of failure to do so. The testimony of the prosecutrix leaves no room for any doubt that she had voluntarily consented to the sexual intercourse committed by the appellant with her. The testimony of Radha Bai PW-2, mother of the prosecutrix and Bhuwan Lal PW-3 also corroborated the testimony of the prosecutrix by deposing that the prosecutrix was deeply in love with the appellant. The testimony of Firal lal Chandra PW-15 in para-2 also corroborates the above fact. Investigating Officer B.P. Yadav PW-24 has in para-9 of his testimony admitted that during investigation it had emerged that the prosecutrix was deeply in love with the appellant.

6. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that it cannot be ruled out that on the date of occurrence, the prosecutrix was a woman aged more than 16 years and had fully consented to the sexual intercourse with the appellant. In this view of the matter, conviction of the appellant under Section-376(1) of the IPC and the sentence awarded thereunder by the learned trial Judge deserves to be set aside.

7. In the result, the appeal is allowed. Conviction of the appellant under Section-376(1) of the IPC and the sentence awarded thereunder are set aside. The appellant is acquitted and he shall be set at liberty forthwith, if not required in any other case. Fine if paid, shall be refunded to the appellant.

Sd/-
Dilip Raosaheb Deshmukh
Judge